

Remarks

Claims 1-21 and 24 are pending and stand rejected. Claim 24 is new. Applicants respectfully traverse the §§ 101, 112 rejections for the reasons presented below.

New Claim 24 is identical to Claim 1, except that the “indeterminable” and “may occur” language has been removed.

With regard to the § 112 enablement rejection concerning Claims 1, 10, 11, 17 and 21 and regarding the language the “timing of equity participation is indeterminable...,” this is necessarily the case as this timing occurs on the sale of the property subject to the mortgage. There is no predetermined date for this sale, obviously, so in this sense the sale, and thus the timing of equity participation (i.e., in the language of the original specification, the time when “the lender may share in a predetermined percentage of realized appreciation on subsequent sale of the asset which is the subject of the mortgage”), is “indeterminable” at the time the mortgage is entered into. The specification repeatedly states that equity participation may occur upon sale of the property subject to the mortgage (see, e.g., page 9, first three lines; original Claim 1, last three lines, etc.). Accordingly, Applicants respectfully submit that the original specification is completely enabling in this regard.

With regard to the § 112 indefiniteness rejection concerning Claims 1, 10, 11, 17 and 21, Applicant respectfully submits that the term “may occur” is not indefinite. In this context, the word “may occur” specifies, in a positive sense, that the contractual documents permit equity participation to occur prior to the maturity date of the mortgage, but that this need not be the case in fact. Thus, a sale occurring prior to the maturity date that triggers equity participation prior to that date meets the claim language; on the other hand, if through the confluence of events the sale

were to occur after the maturity date, but the contractual documents still specified that equity participation could have been triggered by a sale prior to the maturity date, such documents will still be covered by the claim language. Changing "may occur" to "occur" might be argued to be an absolute requirement that equity participation must occur prior to the maturity date, which interpretation Applicant seeks to avoid through the language "may occur."

Accordingly, Applicant submits that Claims 1-21 and 24 are in condition for allowance and requests same. If the next written communication is intended to be other than a notice of allowance of the pending claims, the Examiner is requested to contact the undersigned to discuss the case before sending any further written communication.

Respectfully submitted,



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